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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,609	10/17/2003	Gregory C. Freimuth		2437

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EXAMINER	
LUGO, CARLOS	

ART UNIT	PAPER NUMBER
3676	

DATE MAILED: 05/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/688,609	FREIMUTH ET AL.	
	Examiner	Art Unit	
	Carlos Lugo	3676	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 October 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7* is/are pending in the application.

4a) Of the above claim(s) *6* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5 and 7* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *17 October 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

   - Species #1: Figure 3a.
   - Species #2: Figure 3b.
   - Figures 1 and 2 are considered as generic.

   Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-4 and 7 are generic.

   Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

   Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

   Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record

showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Mr. Jonathan Feuchtwang on May 5, 2005 a provisional election was made without traverse to prosecute the invention of Specie #1, drawn to claims 1-5 and 7. Applicant in replying to this Office action must make affirmation of this election. Claim 6 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Specification

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The

disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

4. The abstract of the disclosure is objected to because of the use of the words "means" and "said". Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. **Claims 1,4,5 and 7 are rejected** under 35 U.S.C. 102(b) as being anticipated by US Pat No 3,712,655 to Fuehrer.

Regarding claim 1, Fuehrer discloses a tamper-evident seal (Figure 9) comprising a main body (130); a flexible loop (110) having a free end (at 120) and a fixed end being attached to the main body; a receptacle (140) provided in the main body and configured to at least partially receive the free end of the flexible loop; and a non-releasable engagement means (120) for retaining the free end within the receptacle. The flexible loop is configured to fail before the non-releasable engagement means releases the free end (Col. 5 Lines 25-39).

As to claim 4, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the claimed quantitative value, of having a loop configured to fail when is subjected to a tensile force between 5-18 lbs, since it has been held that discovering an optimum value of a result effective variable in

order to create a flexible loop that can support a considerable tensile force involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

As to claim 5, Fuehrer discloses that the flexible loop further comprises a region of diminished thickness (at 160) configure to fail before the non-releasable engagement means releases the free end (Col. 5 Lines 25-39).

As to claim 7, Fuehrer discloses that the non-releasable engagement means comprises a tapered head (21 and 22) provided on the free end having a shoulder (124) and at least two flanges (144) provided on the receptacle provided in a spaced relationship to receive and retain the tapered head therebetween.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. **Claims 2 and 3 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 3,712,655 to Fuehrer as applied to claim 1 above, and further in view of US Pat No 4,183,567 to Bone.

Fuehrer fails to disclose that the flexible loop is composed of nylon. Fuehrer only discloses that the seal is made by a molding process (Col. 3 Lines 20 and 21).

Bone teaches that it is well know in the art to use nylon to create a similar seal device (Col. 2 Lines 45-52).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use nylon, as taught by Bone, to make the seal described by Fuehrer, because the selection of a known material based upon its suitability for the intended use is a design consideration within the level of skill of one skilled in the art.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lugo whose telephone number 571-272-7058. The examiner can normally be reached on 9-6pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 571-272-7087. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.

C.L.

Carlos Lugo
AU 3676

May 5, 2005.

Daniel P Stodola

DANIEL P. STODOLA
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